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FILED
SEP 2 1 2004
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No. 04-307

IN THE

Supreme Court of the United States

RUDY WAUQUIN VELA, *et al.*,

Petitioners,

v.

JESUS M. CASTELLANO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS JESUS M. CASTELLANO AND LA CASA DEL NYLON

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QUESTION PRESENTED

Does a bankruptcy court, after appeal and upon remand from the district court, have jurisdiction to decide whether the automatic stay should be retroactively annulled, as ordered by the district court in its remand order?

INTRODUCTION

The U.S. Court of Appeals for the Fifth Circuit correctly determined that the bankruptcy court, in a bankruptcy case originally filed on June 5, 1995, had jurisdiction to retroactively annul an automatic stay in a case that had been appealed and not decided on appeal until March 28, 2001. This ruling is consistent with the express authority given to bankruptcy courts to reopen cases under 11 U.S.C. § 350(b). This ruling recognized the clear authority of the bankruptcy court to act according to the express order of the district court on remand, namely for the bankruptcy court to decide whether the automatic stay should be retroactively annulled.

STATEMENT OF THE CASE

As recited in the Judgment entered on December 30, 2002, and included in Appendix A hereto, Petitioners were beneficiaries of a testamentary trust created by Raul Vela, their great-uncle, who died in September 1984. The surface right to 2,490 acres of real property was left in trust for the benefit of Petitioners. Rudy Vela was both the trustee and received the mineral rights to the property under the will.

The trust provided for distributions to the beneficiaries at certain ages. The trust further contained a spendthrift provision that prevented any beneficiaries from encumbering, assigning or disposing of their interest in the trust.

The Estate of Raul Vela was unable to pay the federal estate or state and local ad valorem real property taxes. Over the years the amount due the federal government eventually grew to over $800,000, and a federal tax lien was filed against the property. In order to avoid the possibility of foreclosure

by the taxing authorities, Rudy Vela, Trustee, borrowed the $800,000 from Respondents which was secured by a deed of trust on the trust property. The note and deed of trust were executed in January 1993. The loan then became delinquent, and on June 6, 1995, a foreclosure sale of the property was conducted.

This case arose in the context of an adversary proceeding filed by Petitioners challenging the deed of trust securing the indebtedness held by Petitioners. That proceeding also challenged the foreclosure sale on the basis that the automatic stay was violated. On the first appeal, the district court held that the lien was, in all respects, valid. However, the district court held that because the debtor acquired a small fractional interest (an undivided 1/20) that was not part of the spendthrift trust, the stay was violated unless the bankruptcy court, on remand, retroactively annulled the stay.[1]

On pages 12-13 in the Petition for a Writ of Certiorari the statement is made that the case was remanded "to the bankruptcy court to ascertain whether the bankruptcy court intended to retroactively annul the stay." If by this statement Petitioners are attempting to create the impression that the remand order was intended only to determine whether in its original order of April 16, 1998 the bankruptcy court had intended to retroactively lift the stay, the impression is erroneous. The remand order stated that "unless the

1. It is clear that but for this small fractional interest which was contained in a quitclaim deed from her brother, executed just a few days before the note and deed of trust at issue, the Debtor's interest (which was in a spendthrift trust) would not have been part of her bankruptcy estate and there would have been no violation of the automatic stay. *In the Matter of Shearn Moody, Jr., Debtor*, 837 F.2d 719 (5th Cir. 1988); *Matter of Goff*, 706 F.2d 574 (5th Cir. 1983).

Bankruptcy Court retroactively lifts the automatic stay . . . [it] was still in effect at the time of the subject foreclosure." The district court directed the bankruptcy court to determine whether the automatic stay should be retroactively lifted.

REASON FOR DENYING THE PETITION

The decision below is consistent with the statutory framework giving jurisdiction to the bankruptcy courts to reopen cases and does not conflict with any decision of this Court, any Court of Appeals, or any court anywhere. Quite simply, the exercise of jurisdiction by the bankruptcy court to reopen a case and retroactively lift an automatic stay is a matter within the sound discretion of the bankruptcy court, and on the facts of this case that framework of a discretionary standard should not be disturbed.

One only needs to read District Judge Hinojosa's March 28, 2001 Judgment (contained in Appendix B) affirming in part, reversing in part and remanding for further hearings, to resolve the issue of whether the bankruptcy court should have addressed the issue of retroactive annulment of the stay. The bankruptcy court did exactly what it was ordered to do on remand, namely, determine if the automatic stay should be retroactively lifted. Petitioners assert that the bankruptcy court did not have any jurisdiction to address the issue of the automatic stay, even when ordered to do so by the district court on remand, absent a previously filed motion to lift or annul the stay.

Reopening of a closed bankruptcy case is governed by 11 U.S.C. § 350(b), which provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

11 U.S.C. § 350(b). Section 350(b) gives the bankruptcy judge broad discretion to weigh the equitable factors in each case and decide whether to reopen it. *See In re Shondel,* 950 F.2d 1301, 1304 (7th Cir. 1991). A decision by a bankruptcy court to reopen a case under Section 350(b) is reviewed for abuse of discretion. *Donaldson v. Bernstein,* 104 F.3d 547, 551 (3d Cir. 1997).

It cannot be seriously argued that Judge Hinojosa's order of remand was not "other cause" within the meaning of 11 U.S.C.A. § 350(b). Clearly, the bankruptcy court in the instant action had jurisdiction to reopen the case and consider the Motion to Annul Stay. Moreover, since this is exactly what it was ordered to do, it cannot be an abuse of discretion. It is telling that Petitioners do not even mention Section 350(b) in their Petition, let alone address its application.

Petitioners cite three cases, *Interstate Commerce Commission v. Holmes Transportation, Inc.*, 931 F.2d 984 (1st Cir. 1991) *Norton v. Hoxie Bank,* 61 B.R. 258 (D. Kan. 1986); and *In re Bluford,* 40 B.R. 640 (Bkrtcy. W.D. Mo. 1984), none of which address the issue in this case, namely whether the bankruptcy court had jurisdiction to retroactively annul the automatic stay, after a remand order directing it to decide whether it should retroactively lift the automatic stay. None of these three cases are in point on the issue in this case. None of these cases address the situation wherein there was a continuous adversary proceeding that was prosecuted through two rulings in bankruptcy court and two appeals to district court, as is present in the instant case.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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